IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3615 of 1988

For Approval and Signature:
HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHIRAJLAL P SHAH

Versus

STATE OF GUJ

Appearance:

1. Special Civil Application No. 3615 of 1988
MR JA ADESHRA for Petitioner No. 1
MS REETA CHANDARANA, ASSTT.GOVERNMENT PLEADER
for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 13/09/2004

ORAL JUDGEMENT

In this petition, though the petitioner had earlier made several prayers, the entire controversy has narrowed down on account of certain events which have taken place over the period of time. The petitioner had initially approached this Court challenging three different enquiries initiated vide charge-sheets dated 19.11.1983, 20.4.1987 and 5.9.1988 respectively. The petitioner had also complained against the non-promotion to the post of Executive Engineer (Civil) when his junior was so promoted on 2.6.1984. During the pendency of this petition, certain interim orders were granted directing the respondents to expedite the Departmental proceedings

initiated against the petitioner. The learned AGP Ms. Chandarana, under instructions of Mr. K.B. Makwana, Deputy Section Officer, Narmada Water Supply and Kalpasar Department, has stated that pursuant to the charge-sheet dated 19.11.1983, a punishment of reduction of Rs. 100/per month from the pension of the petitioner for a period 5 years has been imposed. In the second Departmental enquiry initiated vide charge-sheet dated 20.4.1987, a penalty of with-holding of one increment permanently has been imposed, whereas for the third enquiry pursuant to charge-sheet dated 5.9.1988, the petitioner has been censured by the Disciplinary Authority.

2. The learned Counsel for the petitioner Shri J. Adeshra submits that in view of this development, the only prayer that can survive in this petition is with respect to the petitioner's non-promotion to the post of Executive Engineer (Civil) with effect from 2.6.1984. Learned Counsel Shri Adeshra points out that on 24th October, 1989, it was stated on behalf of the respondent No.2 that sealed cover procedure has been adopted in the case of the petitioner and that the sealed cover will be opened as early as possible. Learned AGP from the available record, states that the sealed cover was actually opened on 17.11.1989 and it was found that the Departmental Promotion Committee recorded that looking to the service record of the petitioner, though he is found fit for promotion, in view of the fact that a charge-sheet has already been issued to the petitioner, his case for the promotion cannot be considered at this stage.

3. From the record of the case as well as the developments as recorded hereinabove, it is clear that on 2.6.1984 when the persons junior to the petitioner was being promoted to the post of Executive Engineer, the petitioner was already facing a Departmental enquiry pursuant to charge-sheed dated 19.11.1983. It is also now a matter of record that two more charge-sheets came to be issued to the petitioner. The learned AGP has also pointed out that the Departmental enquiry initiated vide charge-sheet dated 19.11.1983 was concluded when the competent authority imposed a penalty of reduction of monthly pension of the petitioner by Rs. 100 for a period of 5 years. Thus, when the petitioner is not fully exonerated in the Departmental enquiry, the question of acting on the recommendation of the DPC which was kept in the sealed cover does not arise. It is only when a Government servant is fully exonerated in the Departmental proceedings that he/she can claim the

retrospective promotion pursuant to the recommendations of the DPC, which had been kept in the sealed cover on account of the pendency of the Departmental proceedings (See 1999 (1) SC SLJ 165 = (1998) 9 SCC 261).

4. In the result, I find that the petitioner is not entitled to any relief. The petition therefore fails and is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)
*/Mohandas